

noncommercial capacity under the statute. In calculating this figure, the DBS provider must pro-rate the direct costs based on the amount of time used by the noncommercial educational programmer.⁴¹

C. Payment by a DBS Operator for Noncommercial Educational Programming

The Commission seeks comment on whether contractual agreements which provide for payment by a DBS operator to a noncommercial educational programmer should count toward noncommercial carriage requirements. CFA strongly believes they should. This approach will encourage the development of the highest quality noncommercial educational programming. The critical issues surrounding meeting these obligations stem from the nature of the programming and the relationship between the programmer and the DBS service provider.

The financial arrangements are not relevant as long as there is no corporate relationship between a DBS service provider and a noncommercial programmer and noncommercial educational programmers are not being required to pay more than 50% of direct costs of providing the channel capacity. The Commission is free

⁴¹For instance, the DBS operator cannot be permitted to recover more than the equivalent of one hour if the noncommercial

to permit DBS providers to pay qualified noncommercial educational for programming in satisfaction of the public interest requirements. In fact, the Commission should encourage it in the name of high quality, diverse noncommercial educational programming.

VIII. Political Broadcasting and other Requirements

The Commission raises a number of important questions about the application of the political broadcasting rules to DBS. CFA agrees with the Commission that reasonable access and equal time provisions found in §312(a)(7) and §315 of the Communications Act should be applied to DBS.⁴²

The question of what constitutes reasonable access and equal time is a critical one for candidates for public office. The Commission's intention to apply §73.1212(a)(2)(ii), §73.1940, §73.1941 and §73.1944 of the Rules and policies codified in MM Docket 91-168 to DBS is a good start. To ensure fairness, reasonable access must include all day parts available to candidates. In an instance where a candidate is requesting equal time, the same day parts and type of program⁴³ must be made

⁴²CFA agrees with the Commission's tentative conclusion that if a DBS provider carries a broadcast signal, the broadcaster shall remain responsible for meeting these requirements.

⁴³As the Commission makes note of in paragraph 23 of the Notice cable systems have been informally asked to air opposing political advertisement on channels with similar demographics and

available as was accessed by other candidates in a race.

The Commission's interpretation that §312(a)(7) was designed to provide a special right of access to candidates on an individual basis has been upheld by the Supreme Court.⁴⁴ The approach used by the Commission and supported by the Court has been candidate centered.⁴⁵ The decisions regarding time and channel have been left up to the candidate, within reasonable limits.⁴⁶ A system which includes segregation of political broadcasting, including based on channels or time periods, would be completely at odds with Commission policy and the ruling of the Supreme Court.

DBS providers must not be permitted to put all political advertisements on one or a few select channels. The decision should be left up to the candidate requesting the time. Access to the system is too important to our representative democracy to create a situation where a DBS provider could relegate all political advertisements to unpopular times and channels to

audience size. The should be mandated for DBS.

⁴⁴C.B.S., Inc. v. F.C.C., 453 US 371 (1981).

⁴⁵See; 1978 Report and Order, 68 FCC2d 1079 (1978).

⁴⁶The broadcast licensee is permitted to consider such factors as number of candidates, availability of a class of time and the specific desires of the candidates. It would be unreasonable, however, to apply "an arbitrary blanket ban on the use by a candidate of particular class or length of time in a particular period..." Id. at 1090.

discourage use by candidates. The lowest unit rate charge found at §73.1942 should be applied to DBS providers as well.

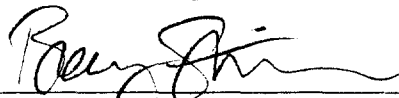
However, CFA recognizes the practical need to give the DBS provider some discretion as has been done with other mediums. It is appropriate for a DBS provider to take into consideration the

CFA believes the DBS provider should simply be required to implement these requirements in good faith. The Commission must review the process after each of the first several election cycles or upon the petition of a candidate, citizen or DBS operator thereafter. This will help to make certain that candidates are being treated fairly and the burdens are not too great on the DBS provider.

IX. Conclusion

CFA encourages the Commission to adopt the recommendations contained herein and to review these public interest obligations annually.

Respectfully submitted,



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APPENDIX A

<u># of NTSC Channels Offered by Provider</u>	<u># of Noncommercial NTSC Channels Required</u>
12-20	4% of one channel
20-29	1
30-44	2
45-59	3
60-74	4
75-89	5
90-99	6
100-109	7
110 or More	7 plus 1 additional channel for every 15 NTSC equivalent channels /